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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,782	10/14/2003	Jeanne Rae Wolfington	276-9	4225

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EXAMINER

SMITH, KIMBERLY S

ART UNIT PAPER NUMBER

3644

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/684,782

Applicant(s)

WOLFINGTON ET AL.

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/14/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Drawings***

1. The drawings are objected to because in Figure 4, the line leading from “20” is directed to the “corner 22” and not to the “seam”. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claim 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claim 1, it is questioned as to how the band mounted to the cover is located entirely within the bottom of the core if it is to cover the core? It is suggested the Applicant insert language such as "within the perimeter of the bottom of the core" to more clearly define the invention.

5. Regarding claims 2, 4 and 5, line 2: it is noted that if a core is in the shape of a six-sided block, this shape would include eight corners, not the four as claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang, US Patent 5,964,634 in view of Crowley, US Patent 6,061,854.

Chang discloses a foam core (14) of three-dimensional shape having a relatively high coefficient of friction, a cover (16) removably mounted to said core being constructed of a fabric having a relatively high coefficient of friction and having a plurality of seams arranged therein so as to define a bag shape with an opening (reference Figure 7) and a plurality of fasteners (40).

However, Chang does not positively disclose the foam core is high-density foam. It would have

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been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Chang discloses the claimed invention except that Chang discloses the use of hook and loop fastener to secure the cover to the core at the opening instead of an elastic band. Crowley shows that elastic bands and hook and loop fasteners are equivalent structures known in the art for fastening covers to foam cores. Therefore, because these two fasteners were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute an elastic band for a hook and loop fastener.

Regarding claim 2, Chang as modified discloses the foam core is in the shape of a regular six-sided block (reference Figure 1).

Regarding claim 3, while Chang as modified does not disclose the elastic band is located roughly within two inches of the edge of the bottom. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the band within two inches of the edges of the bottom, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 4, Chang as modified discloses the core is in the shape of a block and the cover includes four seams spaced evenly around said opening such that when the cover is fitted on to the core, the seams correspond to the corners of the block.

Regarding claim 5, reference discussion of claims 2-4 above.

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Regarding claim 6 Chang as modified discloses hook-and-loop fasteners strategically mounted on the cover.

Regarding claim 7, Chang as modified discloses the invention substantially as claimed with the exception of the fasteners being located on the elastic band. It would have been obvious to one having ordinary skill in the art at the time the invention was made to put the fasteners on the elastic band, since it has been held that rearranging parts of an invention involves only routines skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claims 8 and 9, while Chang as modified does not positively disclose the foam core having the shape of a regular right wedge or a six-sided trapezoidal block, it is disclosed that the foam core comprises a piece of any geometrical shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the core in the shape of a right wedge or a trapezoid since it was known in the art that these are considered geometrical shapes.

Regarding claim 10, reference discussion of claims 1-9 above. Chang as modified further discloses a second step being removably mounted to a first step such that the bottom of the second step is adjacent the cover of the first step and the fasteners are engaged (reference Figure 8).

Regarding claim 11, Chang as modified discloses the fasteners comprise hook-and-loop fasteners.

Regarding claim 12, Chang as modified discloses each hook and loop fastener being mounted such that the portions on each section will mate upon assembly. It is noted that while

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the fastener is double-sided tabs, the hook will be attached to one cover while fastening with the loop of the other cover thereby satisfying the claimed limitation.

Regarding claim 13, Chang as modified discloses a third step (reference Figure 11).

Regarding claims 14 and 15, Chang as modified discloses the apparatus as claimed and the method of use is inherent in the operation thereof.

Regarding claims 16-20, Chang as modified discloses the invention and inherent method as claimed. However, Chang does not positively disclose the shape of the configuration. It would have been obvious to one having ordinary skill in the art at the time the invention was made to arrange the components as claimed, since it has been held that rearranging parts of an invention involves only routine skill in the art.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vandaan (US 2003/0154669), Lien (US 5,007,676), Hosono (US 4,359,793), Gordon (US 4,215,857), Racine (US 3,992,733).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MICHAEL J. CANONE
SUPERVISORY PATENT EXAMINER